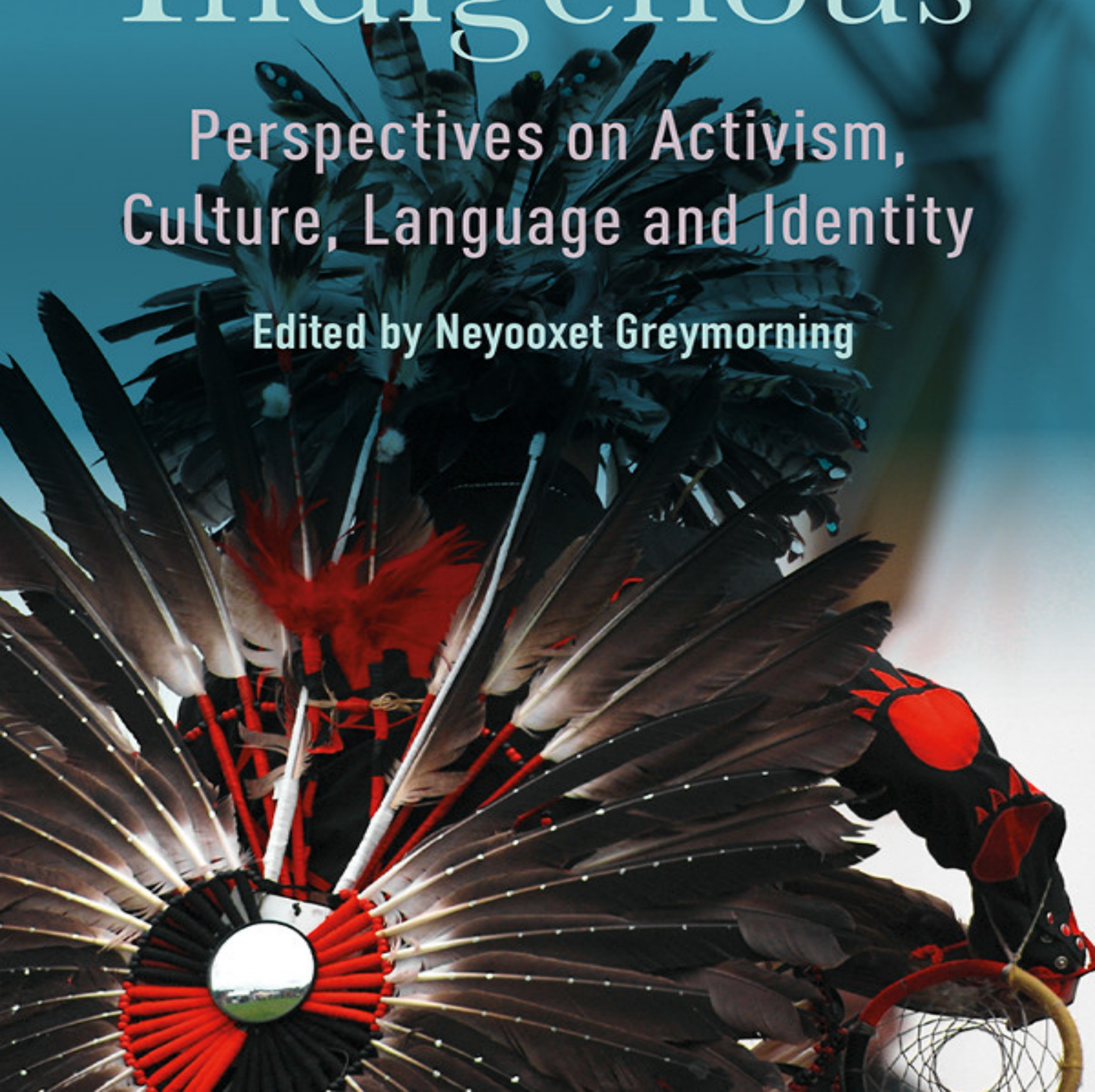


Being Indigenous

Perspectives on Activism,
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7

COLONIZATION AS MYTH-MAKING

A case study in Aotearoa

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Introduction

This chapter focuses on the politics and process of colonization. Rather than studying a specific land dispute or analyzing such consequences of colonization as the suppression of language and culture, it endeavors to chart the myth-making that surrounds the seizure and maintenance of political/economic power that is the basis of all colonial endeavor. All nations of course create or sustain myths from their past to make sense of history and provide a rationale for what now exists. In the story of the colonization of Indigenous Peoples, the founding myths serve a particular purpose that is integral to colonization itself: they justify the current status quo by masking the reality or extent of dispossession that shaped the past and present. The myths become an exercise in absolution for the colonizer, and the basis for ongoing denial of the rights of the colonized. Such absolution is both created and promoted by the agencies of colonizing power. The proselytizing Church, the civilizing education system, the introduced media and the interests of the commercial elite are all part of the hegemonic discourse. But the institution that provided the fundamental rationale and justification for the whole colonizing process is the law. In its symbiotic relationship with political power, the law is both colonization's architect of oppression and its instrument of denial. It is the chief myth-maker.

In New Zealand (Aotearoa) the present relationship between the Maori people and the State (or 'Crown') is shaped by that myth-making. The myths have established a changing process of definition in which the State has altered its position on Maori rights and status to meet whatever it perceives to be its current political interests. It has seen the State give its own meanings to words: to both ignore and claim to uphold Treaty arrangements, to define and constantly redefine the classification of who or what it deems to be Maori, and to deny or reinterpret the facts of history. In the annals of colonization, the New Zealand government is not of course unique in this regard. However the myth-making of the last 150 years in Aotearoa does have particular features. It has enabled a perception of harmonious race relations to gain credence both domestically and internationally. This has grown largely out of the Victorian humanitarian myth that rendered the oppression of the Maori as somehow more benign than that suffered by other Indigenous Peoples, as if one could have comparative levels of oppression ranging from genocidal in one place (say Australia) to enlightened in Aotearoa. This myth not only diminishes the inherent horrors of all colonization; it also seeks to reduce State culpability. Thus when the State does seek to settle grievances, as the New Zealand government now claims to do, its liability and its response are both contextualized within the myths as recompense for determinable acts of injustice, rather than as reparation for the systemic injustice of the colonizing process itself. And the actual forms of redress, shaped also by the myths, grant benefits to ensure economic equity rather than to recognize rights, which would ensure economic and political sovereignty.

It is the purpose of this chapter to case-study this myth-making process and to analyze the continuing repression of the Maori people which it seeks to deny. It will not of course be possible to do more than present a capsule of the history of the colonization of Aotearoa. However, enough history is provided to contextualize the myths, to chart their changes and to illustrate the ongoing processes of colonization, which they represent. In essence, the chapter endeavors to illustrate that colonization and imperialism are more than tangible acts of land theft or physical genocide. They are also an accretion of intangibles, which, in the words of Edward Said (1993, p.8),

‘Linger where they have always been, in a kind of general cultural sphere, as well as in specific political, ideological, economic and social practices’.

The Maori nations in the land prior to 1840

Aotearoa was, and is, a country of Polynesia. The Indigenous Maori are related by kinship and history to the people of Hawaii, Tahiti and other nations of the Pacific Ocean. Maori civilization in Aotearoa itself developed over centuries on a base of politically independent but genealogically and linguistically interdependent Iwi, or nations. Each nation had a clearly recognized territory (on land and water), and exercised political sovereignty, or *rangatiratanga*, throughout that territory. The land was called Papatuanuku, the earth mother, and the relationship sought with her was typically indigenous, being based upon a need for harmony and balance.

Although the total land area of 66 million acres was not continually occupied, it was known and subject to a complex legal system determining its use, maintenance and protection. Its importance is recognized in a proverb that says:

Tē oranga o te tangata, he whenua

Tē marie o te tangata he ngahere

Tē kopu o te tangata he kai

[The land ensures the welfare of the people, the forest shade provides peace, and the bounty of both replenishes the body]

Land was thus the nurturer of Maori cultural life, the base of economic security and the nexus of political authority. But it was also much more than a political or economic resource that needed to be conserved and protected. The land itself was, and is, the source of life: the Earth Mother from whom we all come and to whom we all return. The placenta that nurtures us before birth, and the land that provides nourishment in life, are both called *whenua*. The *whenua* provides its gifts to us as something that must be reciprocated. The exchange is an obligation to be *Kaitiaki* or guardian for all the earth so that her resources will continue to be available. With this obligation, people and the land are interdependent and exist in harmony only as long as their

relationship is in balance. The Maori did not walk the land to seek some Christian dominion over it. Rather, in the words of the poet Arthur Fairburn (1963, p.42), we came to the land 'barefoot, as befits a trembling lover' and found our place in the interwoven pattern of life on the planet.

The values that sought protection of that place and defined meaning in that pattern were handed down from our ancestors. Maori law shaped the precedents, which gave substance to those values, and the exercise of Iwi sovereignty that gave them practical force. Because the land could not be 'owned' in a common-law sense by an individual, the authority of *rangatiratanga* was applied to ensure a balance between the just communal interests of the Iwi, and the sustainable protection of Papatuanuku herself. The result was a system called *he waka eke noa*, a process in which all can share and to which all must give protection. The law that ensured this protection and balance was based on the precedents and wisdom of ancestral divines. The Law determined the care of the land, just as it sought to maintain the collective kinship relations of those who came from her. The Maori were people of the land. As such, they lived not under a system of law, but within a set of legal proscriptions and prescriptions that governed the land and all things. It is this complex society that the Dutch in 1642, and the British in 1769, first encountered. Increasing European incursions after that time were to lead to formal colonization by England from the 1830s and the development of justificatory myth-making from then until the present day.

Colonization and the reason for myth

The historian Michael Doyle (1986, p.45) stated that colonization involves a 'relationship . . . in which one state controls the effective political sovereignty of another political society. It can be achieved by force [or] by economic, social or cultural dependence.' Jacques Derrida (1976, p.123) extended this definition to include a 'violence of the letter', a process by which one culture subordinates and oppresses another in the 'act of naming and leaving unnamed'.

In Aotearoa, the process involved a renaming; a reworking of events and their consequences, which has resulted in an ongoing cultural and social

oppression of the Maori. It has led to a re-definition so profound that it has become mythologized into a received truth. In this sense, colonization is the construction of a particular reality. It is in fact a story of the imposition of a philosophical and myth-making construct, as much as it is a tale of economic and military oppression. The coercive reality of colonization flows inexorably from its theoretical ideals, which in turn continue to deny or delimit both the fact of its coercion and the extant Maori constructs that it sought to destroy. In Aotearoa today, there is a grudging acknowledgment of the 'facts' of colonization, but little recognition of their consequences, the myths that underpinned them or the richness of Maori thought that they endeavored to eliminate. The horror of massacres by colonial forces at Maori settlements, such as Rangiaowhia, are now accepted as causes of embarrassment, if not shame, but the forcible suppression of Maori religious beliefs is not. The eviction from and confiscation of millions of acres of land by the government, and the subsequent deportation of Maori 'rebels', is regarded as wrong, but the dismissal of the complex jurisprudence of Maori law is not. Yet within a colonizing culture framed by the ideals of nineteenth-century Christianity, it was axiomatic that there would be no room for Maori religion. The Christian notion of a monotheistic divinity dangling before humanity the hope or specter of eternal salvation or damnation (depending upon how individuals exercised their free will) dove-tailed nicely with the colonizing ideal. This ideal was therefore bound to see as a barrier to the civilizing ethos of colonization a belief that saw no need for promise or threat about the afterlife, and saw the exercise of individual free will as being limited by a person's collective responsibilities. Likewise, the Victorian ethic of laissez faire capitalism, which underpinned all colonial endeavors, could only be established with the destruction of the 'beastly communism' of Maori economic thinking. Furthermore, an English common law that protected the interests of capitalism and promoted the concept of individual culpability was bound to dismiss any legal thinking that sought responsibility in collective terms. Above all, a political system based on the racist notion of a right to rule through an indivisible sovereignty would not countenance any political theories that vested independent authority in institutions that were seen to question that right.

For colonization to succeed, both as ‘effective sovereignty’ and in the ‘violence of the letter’, it was necessary to do more than physically take over the land and resources of the Maori. It was in fact necessary to create levels of myth-making, to justify the physical and economic dispossession that underpinned the Western will to oppress. To hide the usurpation of political power there needed to be a rhetoric of legal and constitutional right, and to disguise the spiritual and cultural costs of this genocide of the Maori, there needed to be a myth-making that denigrated the worth of those ideals that were to be destroyed. To salve the conscience of Victorian sensibilities, colonization in fact required a set of myths that reified (and frequently deified) the institutions and actions necessary to effect dispossession. To coerce unwilling Maori required a different set of myths, which sought both to demean that which had to be destroyed and elevate as civilized and superior that which would replace it. In each instance, the myths sought to present the racist human agency of colonial greed as something else: as immutable justice, as divine will, as manifest destiny, as benign civilization.

Colonization as magic fiction: Creating the constitutional myths

Colonization is full of often breathtaking exercises in illogic and legal gymnastics, which the Indigenous American writer Robert Williams has referred to as the ‘discourse of conquest’,¹ which seek to construct new realities out of the facts of oppression and to legitimate the illegitimacy of colonial takeover. In New Zealand the power-making machinery of the dominant culture maintains its unspoken right to dominate behind a set of ever-changing myth and rhetoric. The concept of discovery, the inherent authority of proclamation and the confident assertion of Christian superiority have all helped establish a myth that the dispossession and subordination of the Maori is right.

The myth-making began in 1760 when Captain James Cook purported to ‘take possession’ of Aotearoa. Although his secret Admiralty orders required him to gain the ‘consent of the natives’, he did not do so. Instead, he displayed the English colors and took formal possession of the place in the name of His Majesty (Hight & Bawford, 1914). In so doing, Cook of course

was merely exercising the presumed right of a colonizing power to take Indigenous land; a right based in the beliefs of colonial law that heathen natives either did not have the capacity or right to ‘own’ ‘territory’ or that such capacity and rights could be extinguished by a colonizer. Unaware that their land now ‘belonged’ to Britain, the Maori continued to occupy and exercise within the sovereignty that the colonizing rhetoric deemed them incapable of possessing. Even as a steady trickle of mainly English traders, whalers and missionaries began to arrive after Cook’s voyage, *de facto* and *de jure* possession and authority remained with the Maori.

By the early nineteenth century, however, a population of about 2,000 Pakeha (White people) had made their base on Aotearoa, and they were calling for the establishment of some form of governmental structure. The existence of Maori governmental structures and legal processes was, of course, never deemed applicable to non-Maori. Although Englishmen always acknowledged the convention that they should accept the legal jurisdiction of other countries in which they resided, they did not accept that as part of the colonizing endeavor. Indeed, a colonial convention arose that an Englishman always carried his law with him to ‘native’ countries.

Calls for the formation of a White government were therefore inevitable. When they were combined with the development of a commercially-backed ‘immigration scheme’ in the 1830s, it was clear that the foundations for a colonizing enterprise in Aotearoa were being established. In response to this movement, Maori leaders in 1835 issued the Declaration of Independence of the Iwi of New Zealand. While willing to access new technology, trade and, in many cases, religion, the Maori were very clear that their political authority and their relationship with the land should not be compromised. The Declaration, in its English text, thus states that ‘all sovereign power and authority is hereby declared to reside entirely and exclusively in the [Iwi] . . . who also declare that they will not permit any legislative authority to exist separate from themselves’.² The Declaration was addressed especially to the King of England and was acknowledged by him. As a political document based within the certainties and precedents of Maori law, it remains for the Maori a clear expression of self-determination, which our people expected to be respected. To successive governments, however, it was merely a quaint artifact rendered invalid by the rules of imperial law. Indeed, for most

colonizers the Declaration seemed little more than the Maori playing at being civilized, a fiction of sovereign power, and, in pursuit of the fiction the British issued a new proclamation of annexation in January 1840, which did not even mention the Declaration. In Derrida's words, it ceased to have meaning because it was 'left unnamed'. A month later, the Crown signed a treaty with the peoples it already claimed to have annexed. The Treaty of Waitangi signed between Iwi and the British Crown was also to be subsequently redefined or renamed in a way that changed it from a document of equal sovereignty to a device to pacify the natives to a new and contemporary form that sees it lauded as a document affirming Crown authority in a bi-cultural nation. To chart the changing Pakeha perceptions of the Treaty is to chart the myth-making process of colonization.

The Treaty is a bilingual document, the Maori text of which was signed by over 500 leaders of Iwi and the Crown representative, Governor William Hobson. In the Maori text, the *rangatiratanga*, or sovereignty, of the Maori is reaffirmed and the governor is granted the right to govern the rapidly increasing (but minority) White population. In the English text, which was not discussed at Waitangi, this right of governance over settlers is rendered as a 'cession' of Maori sovereignty; the *rangatiratanga* of the Maori, in contrast, is rendered as 'full exclusive and undisturbed possession of their lands and estates, forests, fisheries, and other properties'.³ To the Maori, the Treaty has always been an exercise of Iwi authority or nationhood, by which Britain was granted permission to enter Aotearoa and to impose authority upon immigrant settlers. It was also a reaffirmation of the sovereignty expressed in the Declaration of Independence, and many leaders declined to sign what they saw as a mere addendum to the Declaration. The English text received scant attention from Iwi, for whom any notion of giving away or ceding authority would be both unthinkable in cultural terms and impossible under Maori law. Although such views were known and accepted by the British Colonial Office prior to 1840, they were inevitably subordinated to the constructs of absolute Pakeha power and their need to impose legal and political structures over all peoples within New Zealand. Just three months after its signing, the Treaty was discarded by the British with the issuing of a unilateral proclamation of sovereignty. The proclamation, read with due ceremony by the governor, even while his officials were elsewhere gaining

other Maori signatures to the Treaty, was deemed to give immediate right to the exercise of British authority over the Maori. In an application of what may be termed the Doctrine of Imperial Petulance, the Maori people were to be British subjects because the British said so. The fact that Iwi did not participate in the proclamation, did not consent to it, and in most cases did not even know about it, was irrelevant to the dominant discourse. Its efficacy required a suspension of disbelief, which the colonizers were willing to accept but the Maori still do not.

For the next 130 years legal sovereignty was sourced in colonial rhetoric based on the proclamation and the Treaty of Waitangi, which was literally hidden away to be almost destroyed by rats. In 1877, the Courts created a legal precedent, in the case of *Wi Parata v. Bishop of Wellington*, which would have the Treaty disappear. In a remarkable piece of legal sleight of hand, the chief justice decided that the Treaty conferred no rights and established no constitutional arrangement, because it was 'a simple nullity'. It had no existence in law therefore it had no existence at all. The sacred pact, which the Maori had signed less than 40 years earlier, was clearly irrelevant to the colonizing discourse. Ironical meaning could now be ascribed to the words of a colonial secretary announcing that any treaty with natives was 'a mere illusion and pretense'. The reality of solemn prescription of rights was reduced to fantasy, to forgettable myth.

Constructing the myths and denying the reality: 1840–1970

The commonalities of colonization known to all Indigenous Peoples were meted out to the Maori. A rapid increase of settler numbers (from 2,000 to 1 million in 50 years), the introduction of new diseases, the preaching of a new religion, the imposition of a new legal system and the expanding presence of a military force, all provided the infrastructure for colonial takeover. Each also contributed to the physical decimation of the Maori population. But, more importantly, they contributed to that awful decimation of the Indigenous soul, which is the spiritual cost of colonization and was a necessary precursor to the myth-making of a new social reality. The soul of the people, the essence of their being, exists within the warmth of their culture; it is

nurtured and sheltered by the wisdom of their history and philosophy. To oppress a people, to set in place the bloody success of colonization, it is necessary to destroy the soul. For the Maori, the attack on their soul was to be so terrible it would lead to a weakening of faith in all the things that had nourished it. The demeaning of the values, which cherished it, the language, which gave meaning to its soul, the law, which gave it order, and the religion, which was its strength, was to ultimately affect the belief of the Maori in themselves.

When colonization demanded the rejection of the actual institutions of Maori law, religion, education, economic distribution and political authority, it removed those things that gave tangible expression to the Maori soul. In a sense, it took away the structures and processes that gave meaning to the life of the Maori. In so doing, it began to capture the very processes of Maori thought and thus redefined what was henceforth to be the accepted worldview. It thereby induced an agony into the Maori soul as it sought to survive under an increasing Pakeha domination that mocked it. In place of the surety of an ancient culture, colonization introduced an alien philosophy, an all-pervasive foreign ethos, which would give meaning to all that was henceforth to be regarded as good.

The vehicle for much of the attack on the soul of the Maori would be 'the law': a law not seen as some impartial and culturally neutral set of theories, but as a manifestation of the same traditions that gave rise to the colonizing enterprise itself. The law of the colonizer has its roots in Western Christian heritage and its growth has been nurtured by the interaction of particular socio-cultural and economic interests. Its definition of what is 'legal' or 'illegal', its definitions of 'ownership' and its concepts of 'property' are cultural artifacts linked by particular notions of political power. When that political power seeks suzerainty in a colonial context, the implementation and interpretation of the law become political and ideological acts. The law becomes a means of imposing and maintaining bonds of obedience and deference, of legitimizing colonial power and of constantly recreating a structure of authority based on the taking and control of 'property'. Rather than becoming what a former prime minister called a 'pure and unpolluted stream', the law is actually part of the muddied pool of colonial domination. If the philosopher John Locke (Lock & Peardon, 1952, p.72) could state that

‘government has no other end but the preservation of property’, the colonizing law could seek to legitimate the theft and redistribution of all properties held by those to be colonized. The law was thus both the leitmotif on which colonization was predicated and the righteous indignation by which opposition to it was expressed. In Aotearoa, the indignation is illustrated by the ongoing process of placing Maori land under State control, which remains the most costly and tangible expression of the colonial imperative. The legal/political justifications of that process have in turn established the most enduring of myths.

The ‘Maori Wars’, which were fought between Iwi and the Crown in the 1860s and 1870s, were both the prelude to and aftermath of concerted efforts to clothe the theft of land in legal rhetoric. The eviction and deportation of people from their land was renamed and explained in the legislative myth-making of the Suppression of ‘Rebellion’ Act and the confiscation of millions of acres of land was rendered as something else in the New Zealand ‘Settlements’ Act. The Earth Mother was redefined as a property interest and became ‘Crown land’. Her acquisition by White settlers, no matter how obtained, was legitimized in the Validation of Invalid Maori Land Sales Act, and her subsequent description as ‘private’ land rendered it inviolable and beyond claim by the Maori. The guardianship ties, which the Maori had with the land, were broken and a new tenure system changed the Maori from the children of the Earth, with communal obligations, to vested ‘owners’ with individual title. Dispossession was masked and redefined in legal myth to appear as something other than theft. Yet by 1900 the State-defined estate of Maori land was less than one-twentieth of its original area. These wars and laws were actioned by the representative ‘settler government’ established by an imperial statute, the 1852 New Zealand Constitution Act. No longer directly responsible to Britain, the elite of White society could impose their own version of capital self-interest and indigenous subordination. If opposition arose, new myths could be created to nullify it, as in the New Zealand Settlements Act 1863, which was redefined to mean large-scale confiscation of Maori land as ‘settlement’.

The law in effect redefined what was happening to the Maori, and helped create both a new reality and a determining set of understandings and interpretations to underpin that reality. To shore up the new construction and

to ensure Maori subordination, colonization had to constantly assert the rightness of what was happening and to apparently ameliorate the consequences of genocide, land theft and the social and cultural dislocation that still determine the lives of the Maori today. The diseases of poverty, the internalized violence borne of oppression and the despair among the young shaped by an unemployment rate of nearly 60 percent are all products of the dispossession wrought by colonization. Yet the Maori have survived and now claw back cultural and spiritual imperatives of language, religion, customs, law and history. And this survival exposes the myth of harmonious race relations borne of a time when the Maori were invisible in the struggle to live. It also exposes a more potent myth, the assumed right of Whites to rule this land. The changing nature of that myth is seen in the recent history of the Treaty of Waitangi.

The born-again treaty: Myth-making rampant

For a major part of this century, the Maori sought solace and protection from the pain of colonization in political quietude. Largely restricted to isolated rural areas, the people sought to take advantage of new technologies, access the new literacy, nourish the battered soul and cherish the dreams invoked by the Treaty of Waitangi. Colonization, of course, continued. Land alienation occurred under various legislatively enshrined confiscators such as the Maori Affairs Act, which permitted confiscation for roads and other 'public developments'. Maori children were punished for speaking the Maori language, and Maori adoption and marriage procedures were prohibited. Where deemed necessary, military power could still be used, as it was in the attack on the religious community of Maungapohatu in 1916. Through the exercise of power by its now established political apparatus, the State could thus proclaim its ability and right to subordinate the Maori. Through the other institutions of the law, such as the Courts, that subordination could be framed within a legalistic rhetoric that both evidenced and legitimated its assumed sovereign authority.

Peaceful Maori opposition and protest against State usurpation did not die out but gathered momentum in the 1960s as the Maori began to move to the cities and voice discontent in forums beyond the rural home base. Mass

returns to the land (defined as 'illegal occupations' by the State), protests seeking reaffirmation of the Treaty, and the articulation of a self-determination dialectic by many Maori thinkers and activists, contributed to a new sovereign movement, which, by the mid-1970s, could not be ignored or forcibly repressed. The Crown response was to introduce a new policy and create a new mythology. In the 1970s and 1980s the government announced that it would acknowledge the wrongs done to Maori and would seek practical ways in which the issues could be defined, faced and solved, whereby ignorance and apathy should not deter or delay a proposed solution (Palmer, 1984). The new policy was seen by many as a genuine attempt to deal with a legacy of colonial oppression. The strategies and processes developed to implement the new dawn exposed a new face on the old myths. The baseline of the policy remained the assertion by the State of its right to rule, and the denial of any right to question that assumption. What changed, though, was the basis upon which the State now made the claim to sovereignty.

The Crown in essence rediscovered the Treaty of Waitangi. Century-old Treaty petitions by Maori to parliament, and even directly to the sovereign in England, which were previously rebuffed, were now regarded as pointers to 'resolution'. Court decisions, which had previously dismissed the Treaty, were redefined as judicial 'aberrations'. Arguments based on a notion of Treaty rights that had previously been taken by one judge to simply evidence that a council had been driven to desperate straits (Jeffries, 1969, p.68), were now to become the basis of serious academic and political debate. The simple nullity was to become a binding constitutional document. But it was to be a document redefined as a Treaty of cession. Maori perceptions of the Treaty as an argument signed, in the words of one Iwi, in terms of 'self-determination . . . of the enduring right to govern ourselves',⁴ were to be dismissed. *Rangatiratanga*, the concept and expression of that right to govern, was redefined as an 'especial interest' in land. But even that interest, described in the Treaty as 'full and exclusive', was to be reclassified as an interest delimitable by the Crown. The Treaty would indeed no longer be a discarded nullity in the rhetoric of the Crown, but would remain a device to pacify the natives in the processes that lay behind the rhetoric.

A myth was born in which the Treaty was to be the justification and base for Crown sovereignty. The 1840 proclamations of annexation and sovereignty were shuffled to the margins of constitutional thinking and replaced by the Treaty as the *raison d'être* for Crown authority. Reflecting New Age sensitivities, this revived Treaty was to be different from other oppressive or discarded arrangements of the colonizing era. The Treaty of Waitangi was now held to have created a unique concept of partnership in which the State must recognize the particular interests of its junior Maori partner and, to ensure the 'good faith' recognition of that partnership, reference was not to be made to the Waitangi Treaty but rather to a set of Treaty 'principles'. Within the contest of this new Treaty awareness, the Crown has come to be seen as facing up to the difficult decisions of finding just solutions for the Maori without creating new injustices for Pakeha. While constantly reassuring the majority White electorate that 'very little is actually being done', the apparatus of the State constructs the new reality of a progressive government seeking to redress wrongs of the past. An agency of the Crown, the Waitangi Tribunal, was established in 1975 to hear Maori grievances. Bound by its parent statute to equally consider both texts (exit the *contra proferentum* rule) and to find resolution based on Treaty principles, the Tribunal has been a major component of the myth. In spite of the honest endeavors of Tribunal members, its statutory ability to recommend only resolution to government has meant that its work has helped shape the myth without delivering any substantive change for the Maori in terms of the sovereign power assumed by Pakeha in the process of colonization. Its junior role in the judicial hierarchy has also meant that it is bound to accept Court interpretations of the Treaty and Court pronouncements on sovereignty.

Since 1987 the Courts have dismissed the *Wi Parata* decision and begun analyzing the Treaty's principles in a new jurisprudence that draws heavily upon the colonial law doctrine of aboriginal title, which recognizes the validity of native title to land. The doctrine, however, countenances no authority but that of the colonizing State and reserves to that State the right to extinguish native title. In its most important pronouncement of the *New Zealand Maori Council v. Attorney General* (1987) case, the Court of Appeal legitimated Crown sovereignty (and hence subordinated the Maori) by

simply stating that the Treaty, while no longer a nullity, was nevertheless a bargain in which the Maori were to be governed as subjects of the Queen and that neither ‘the provisions of the Treaty . . . nor its principles are . . . a restraint on the legislative supremacy of Parliament’.⁵ In less than 20 years this reaffirmation of Maori non-sovereignty has been refined into a myth of judicial compassion and State good faith. Maori challenges to that myth, and Maori perceptions of the Treaty, are dismissed or redefined to maintain the illusion of a just and legitimate colonial authority. The socio-economic and cultural pain, which resulted from the land loss and diminution of Maori values, is now variously attributed to Maori laziness, inability to cope with the ‘modern’ world or even some genetic inferiority. While the imposed law no longer rejects a notion of Maori rights, it redefines those rights and thereby sources them within a pluralistic common law, rather than in Maori authority. Pakeha lawyers, judges and institutions no longer dismiss the concept of Maori authority, *rangatiratanga*; they capture and emasculate it. Pakeha academics frame the whole discussion of Maori rights within a pluralistic jurisprudence of the spirit that is consistent with the law. Overseas experts laud the ‘advances’ and hold up the Waitangi Tribunal as a model for other Indigenous Peoples, but the Tribunal and the Courts do not, cannot, question the political dynamics that established and maintain them. And the new wave bicultural sensitivities of State policy cannot disguise the reality of ongoing colonization, the removal of political power from the people being colonized. What they do achieve, however, is the construction of a powerful new myth: that New Zealand leads the world not only in the benevolence of its actual colonization, but also in the way it now seeks to redress the wrongs of its past. Such is the power of myth. Such is the force of the colonizing imperative that a Treaty entered into with good intent, and then dismissed, can now be resurrected as an instrument of deception.

Conclusion: Deconstructing the myth

The process of colonial myth-making makes the oppression of others justifiable in the eyes of the colonizer and justifiable in the minds of those colonized as its victims. In its present-day manifestation in Aotearoa, what has been erected for the majority Pakeha is a good faith partnership in which

any challenge by Maori is perceived as an ungrateful threat to racial harmony. For many Maori, a seemingly necessary trust has been engendered in the efficacy and ability of the dominant culture to recognize and facilitate Maori self-determination. The myths have in fact created a Gramscian hegemony in which the colonial constructed reality persuades Pakeha to believe their own mythology and the Maori to live within parameters of political and economic expression determined by the State. The only reality the Maori are permitted to define and inhabit is a 'cultural' construct of language, music, art and custom. At best, such a construct offers comfort and spiritual protection to the Maori; at worst, it is confined by State perceptions of safe colonial expression and by a Christian historiography of what is acceptable custom. If the Maori are to reclaim the right to define both the cultural and political expression of sovereignty, the myths of colonization need to be challenged from within the social reality of Maori culture. That will lead to a new reality in which the Maori are again the 'namer of names' and will inevitably change the belief systems that colonization has imposed to ensure our subordination and acquiescence. For whenever Indigenous Peoples have been able to break free from the state that many writers have called the 'colonization of the mind', their new freedom to think and believe differently has led to different societies and different structures of power also. So it will be with the Maori.

In Aotearoa, many Maori are striving to establish new ways of believing that focus not on the determinable grievances of the past but instead on the systemic injustices of colonization itself. Such a process involves identifying the myths that permeate and maintain colonization as the first step in its deconstruction. It will inevitably lead to practical strategies in which the Maori can reconstruct Maori reality for the twenty-first century and thus reclaim effective sovereignty. In so doing, they will fulfill the hopes expressed by a Maori leader, Te Ataria, in 1892: 'What has happened since the Treaty is all confusion . . . the loud voices and strange silences of others hide our loss . . . our children will need to break the silence and tell our stories once again.'⁶

Notes

¹ See Robert Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (1990).

- ² *The Declaration of Independence of the Maori People of New Zealand* (Waitangi 1835).
- ³ Article 2, Treaty of Waitangi, 1840.
- ⁴ Submission to NZ Parliament of Te Kotahitanga o Te Tai Tokerau, July 1987.
- ⁵ For Robin Cooke's observations, see *New Zealand Maori Council v. Attorney General* (1987), p.655; for John Somers' observations, see p.691.
- ⁶ Diaries of te Ataria Rarer, Ngati Kahungunu. Family archives.

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